

S.B.CRIMINAL MISC. PETITION NO.1367/2006
(Mana Ram & Ors. Vs. State of Raj. & Anr.)

Date of order : : 11.04.2007

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.G.R.Punia, for the petitioners.
Mr.Ashok Upadhyay, PP for the State.
Mr.Nahar Singh]
Mr.P.S.Rathore], for the respondent.

Heard learned counsel for the petitioner as well as learned Public Prosecutor and learned counsel appearing for the respondent. I have gone through the order dated 27.7.2006 passed by learned Additional Chief Judicial Magistrate, Phalodi whereby he has taken cognizance against the petitioners for offence under Section 135 of the Indian Electricity Act and Section 430 IPC.

The first argument of learned counsel for the petitioners is that no cognizance could have been taken under Section 135 of the Indian Electricity Act, unless complaint is filed in writing by appropriate Government or appropriate Commission

or any of their officers authorized by them or a Chief Electrical Inspector or an Electric Inspector or licensee or the generating company, as the case may be. The provision of Section 151 of the Indian Electricity Act bars the cognizance on the police report. It is further stated that the licensee are those persons as mentioned in Section 14. The second argument of learned counsel for the petitioners is that no offence under Section 430 IPC is made out against the petitioners as no mischief has been committed by the petitioners. Learned counsel states that if the petitioners could have disrupted the water supply then the said offence could have been said to have been made out. Therefore, order of learned Magistrate taking cognizance against the petitioners for offence under Section 135 of the Indian Electricity Act and Section 430 IPC is bad in eye of law and requires interference by this Court.

On the other hand, learned Public Prosecutor and learned counsel for the respondent have supported the order of learned Magistrate and states that learned Magistrate after considering complete record, has taken cognizance against the petitioners. It is further stated that accused-petitioners have cut the electricity connection from the transformer and stopped the

supply of electricity and therefore, water could not be supplied to the crop. Due to mischief committed by the petitioners, a great economic loss has been caused to the complainant as it has damaged to the crop. Therefore, the order of learned Magistrate does not require interference by this Court.

I have considered the rival arguments advanced by learned counsel for the parties and also gone through the relevant documents produced before me. The learned Magistrate has taken cognizance against the petitioners for offence under Section 135 of the Indian Electricity Act and under Section 430 IPC. From perusal of the provisions of Section 151 of the Indian Electricity Act, it appears that no cognizance for offence under Section 135 of the Electricity Act could have been taken on a private complaint. The provisions of Section 151 of the Electricity Act, 2003 runs as follows:-

"Sec.151. No Court shall take cognizance of an offence under this Act except upon a complaint in writing made by appropriate Government or appropriate Commission or any of their officers authorized by them or a Chief Electrical Inspector or an Electric Inspector or licensee or the generating company, as the case may be"

Looking to the provisions of Section 151 of the Indian Electricity Act, the cognizance taken by learned Magistrate on police report against the petitioners for offence under Section 135 of the Indian Electricity Act is bad in eye of law and the same is liable to be quashed.

So far as cognizance under Section 430 IPC is concerned, I have gone the provisions of Section 425 and 430 of the Indian Penal Code which reproduced as under:-

"425 **Mischief**.-Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

"430. **Mischief by injury to works of irrigation or by wrongfully diverting water:-** Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness or for carrying on any manufacturer, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both."

A bare perusal of the provision of Section 430 IPC clearly shows that whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or any other purpose, then the said offence is said to be committed.

I have given thoughtful consideration to the provisions of Sections 425 & 430 IPC I.P.C. and also gone through the FIR as well as evidence collected during investigation. It has been stated in the statement that petitioners had cut the electricity wire from the transformer which resulted in stop of the supply of water to the crop and damage was caused to the complainant. On this basis, learned Magistrate has taken cognizance against the petitioners for offence under Section 430 IPC also. At this stage, I do not want to comment on the merit of the case so that parties may not be prejudiced at subsequent stage but looking to all the facts and circumstances of the case, I am not inclined to interfere with the order of learned Magistrate in so far as it relates to taking of cognizance for offence under

Section 430 IPC as there was ground to proceed against the petitioners under Section 430 IPC.

For the reasons mentioned above, this misc. petition is partly allowed and the order dtd.27.7.2006 in so far as it relates to taking of cognizance for offence under Section 135 of the Indian Electricity Act is quashed. As far as order taking cognizance under Section 430 IPC is concerned, I do not found any good ground to interfere. However, it is left open for the petitioners to raise all the objections regarding offence under Section 430 IPC before the learned Magistrate at the time of framing of charge. Learned Magistrate shall decide the objections of the petitioners as to whether offence under Section 430 IPC is made out or not after hearing both the parties in accordance with the law without being prejudiced by the order passed by this Court

With the above observations, this misc. petition is disposed of.

(KRISHAN KUMAR ACHARYA), J.